

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0008P

**Withholding Tax
For the Calendar Year 2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of an annual withholding tax return for the calendar year 2004. The taxpayer is an Indiana company.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the return was late due to local Post Office procedures.

The U.S. Post Office states the mail procedure in the town where the taxpayer is located is as follows: The Post Office does not postmark the local mail when received. Instead, the local Post Office sends the mail to the regional hub for postmarking. This often results in the mail being postmarked one day late.

The taxpayer states the Post Office procedure is the reason why the annual withholding tax return was not received by the Department on the due date.

The Department points out the annual withholding return was fifteen days late. And therefore, the local Post Office procedures would not be a factor in the abatement of penalty.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.